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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 ARNOLD NAVARRO, on behalf of himself
14 and all others similarly situated,

15 Plaintiff,

16 v.

17 SMILEDIRECTCLUB, INC.; and
18 SMILEDIRECTCLUB, LLC; JEFFREY
19 SULITZER; JEFFREY SULITZER, D.M.D.,
20 P.C., and DOES 2-10,

21 Defendants.

Case No. 3:22-cv-00095-WHO

Judge: Hon. William H. Orrick

FIRST AMENDED COMPLAINT

[CLASS ACTION]

Date Removed: January 6, 2022

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27 Arnold Navarro (“Navarro” or “Plaintiff”), individually and on behalf of all others similarly
28 situated, and the general public, complains and alleges as follows:

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I. NATURE OF ACTION

1. Plaintiff brings this Class Action Complaint for legal and equitable remedies based on Defendants' SmileDirectClub, Inc., SmileDirectClub, LLC, Jeffrey Sulitzer, Jeffrey Sulitzer, D.M.D., P.C., and DOES 2-10 (collectively, "Defendants") operation of an enterprise engaging in the unauthorized practice of dentistry. Specifically, Defendants provide dental services to Plaintiff and Class Members without the care, supervision, oversight and legal necessity of having a licensed dentist involved in every step of providing medical services.¹

2. Defendants' California operation is estimated to be a \$100 million-dollar unauthorized practice of dentistry enterprise, servicing approximately 100,000 California patients. Negative reviews and complaints have flooded messaging boards, online sites, and other places concerning the harmful effects of using Defendants' services and its teledentistry services to straighten teeth. Eager to "disrupt" modern health care services, Defendants have put the desire for profit ahead of the health of the general public.

II. VENUE

3. This Court has personal jurisdiction over defendants because they are residents and/or doing business in California.

4. Venue is proper in this Court in accordance with Federal Rules of Civil Procedure, because Plaintiff and the proposed Class reside in California and maintain addresses with Defendants in the state of California. Defendants maintain "shops" throughout the State of California, and in this district, including without limitation, at 2140 South Shore Center, Alameda, California 94501.

III. PARTIES

1. Plaintiff and the Class Members are residents, citizens, and patients of the State of California. Plaintiff has resided in the State of California at all times relevant to this action, and has

¹ <https://news.bloomberglaw.com/health-law-and-business/smiledirectclub-loses-challenge-to-california-dental-board-rules>. The Dental Board of California has classified Defendants' storefronts as illegal dentistry practices.

1 maintained an address with a California address with Defendants. Plaintiff and the Class Members
2 obtained Defendants' medical services for personal, family, and household purposes in that they
3 sought to straighten their teeth and improve appearance of their teeth. Plaintiff obtained Defendants'
4 services on or about May 28, 2020. Plaintiff was harmed by Defendants' conduct, which included
5 without limitation, making false representations about the quality of services to be performed, and
6 misleading and violating consumer protection laws of California. Plaintiff has had serious issues with
7 his bite, the placement of his teeth, and has sustained significant pain and injury based on Defendants'
8 services.

9 2. Defendant SmileDirectClub, Inc. (referred to in this paragraph as "SDC, Inc.") and
10 Defendant SmileDirectClub, LLC (referred to in this paragraph as "SDC, LLC") collectively own and
11 operate a "teledentistry" company that does business online and at over 300 brick-and-mortar retail
12 locations across the United States. SDC Inc. is a holding company. Its sole material asset is its equity
13 interest in SDC Financial which, through its direct and indirect subsidiaries, conducts all of the
14 Company's operations. SDC Financial is a Delaware limited liability company and wholly owns SDC,
15 LLC, a Tennessee limited liability company. Because SDC Inc. is the managing member of SDC
16 Financial, SDC Inc. indirectly operates and controls all of the business and affairs of SDC Financial
17 and its subsidiaries including of SDC Financial's wholly owned subsidiary SDC, LLC. Thus, both
18 Defendant SDC, Inc. and Defendant SDC, LLC "integrate[] the marketing" for the "teledentistry
19 platform" that is advertised and made commercially available through Defendants' "direct-to-
20 consumer model."

21 3. Defendant Jeffrey Sulitzer DDS, is a dentist who represents his office according to the
22 Board of Dentistry at several addresses, including 1111 Broadway 3rd Floor, Oakland, CA 94607,
23 Alameda County. The status of this business license is presently listed as "cancelled."

24 4. Defendant Jeffrey Sulitzer, is a licensed dentist practicing dentistry in California
25 through his professional corporation, Jeffrey Sulitzer, D.M.D., P.C. ("Sulitzer P.C."). *Sulitzer, et al.*
26 *v. Tippins, et al.*, Case No. CV 19-08902-GW-(MAAx) (C.D. Cal May 18, 2020), ¶ 1. Sulitzer P.C.
27 originally listed an address at 655 Montgomery Street, San Francisco, CA 94111, in its Articles of
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1 Incorporation filed with the California Secretary of State. Sulitzer P.C. is an entity whose principal
2 place of business is in California, and who is in fact, domiciled and a citizen of California.

3 5. Plaintiff is ignorant of the true names and capacities of the Defendants DOES 1 through
4 10, inclusive, whether individual, corporate, associate, or otherwise, and therefore have sued them by
5 the foregoing names, which are fictitious. Plaintiff asks that when their true names and capacities are
6 discovered that this Complaint may be amended by inserting their true names and capacities in lieu of
7 said fictitious names, together with apt and proper words to charge them. All references to any named
8 Defendants shall also refer to said Does. When the true names and capacities are ascertained, Plaintiff
9 will amend this Complaint accordingly. On information and belief, Plaintiff alleges that each of the
10 fictitiously named defendants was responsible in some manner for the acts and omissions alleged
11 herein and are liable to Plaintiff herein.

12 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

13 6. The Defendants do not conduct an initial exam of Plaintiff and class members' mouths,
14 gums, roots before a diagnosis and treatment plan is discussed with the patient.

15 7. Defendants practiced dentistry by performing, or offering to perform, orthodontic
16 diagnosis and the treatment of malposed teeth, which is the practice of dentistry as defined by Code
17 section 1625, subsection (b).

18 8. Defendants indicated that they would perform orthodontic treatment and construct,
19 alter, repair, or sell orthodontic appliances, which is the practice of dentistry as defined by Code
20 section 1625, subsection (c).

21 9. Defendants managed or conducted as manager, proprietor, conductor, lessor, or
22 otherwise, places where dental procedures were performed, which is the practice of dentistry as
23 defined by Code section 1625, subsection (e).

24 10. Defendants advertised, fabricated, manufactured and sold orthodontic appliances
25 directly to consumers when the casts and/or impressions for the work had not been made or taken by
26 any licensed dentists, and without any written authorization for the work by Defendants or any other
27 dentist, which is the practice of dentistry as defined by Code section 1626, subsection (e).

1 11. Defendants falsely represented that they wholly owned and entirely controlled the
2 subject dental offices and mobile dental units of licensed dentists when they did not.

3 12. Defendants falsely represented that smile could be fixed, and mouth could be fixed
4 without in-patient care and without an initial exam, when that is not legal, nor practical.

5 13. Plaintiff served a pre-suit Consumer Legal Remedies Act (“CLRA”) letter via certified
6 mail on certain Defendants on July 30, 2021.

7 14. Defendants contend that they are under an arbitration agreement with Plaintiff and the
8 Class Members. Without conceding whether assent was obtained to any such agreement (Plaintiff has
9 not received adequate and proper evidence of such fact), and expressly reserving the right to contest
10 assent and to raise other issues as to whether the dispute must proceed in Court as an action for public
11 injunctive relief, each of the Defendants, and there California stores, are “clinics” pursuant to Health
12 and Safety Code § 1200 because they provide “dental” services or treatment to patients who remain at
13 the various stores less than 24 hours, and they may also provide diagnostic or therapeutic services to
14 patients as an incident to care provided at the store facility.

15 15. Because each of the Defendants are “clinics,” they are “Health Care Providers” under
16 *California Code of Civil Procedure § 1295(g)(1)*, which defines a “Health Care Provider” to include
17 “any clinic...” and the “legal representative” of any health care provider. Dr. Jeffrey Sulitzer who at
18 times held a license at more than twelve California stores, was at relevant times, operating a clinic.²

19 16. As a “Health Care Provider,” the purported form arbitration agreement does not comply
20 with *California Code of Civil Procedure § 1295(a), (b), (c), or (d)*. For this reason alone, and other
21 reasons to be addressed in an anticipated motion to compel arbitration that Plaintiff expects Defendants
22 to file, the dispute must be litigated in Court, and the alleged arbitration agreement is wholly
23 unenforceable as it pertains to this dispute.

24 17. In addition, this action only seeks public injunctive relief, and specifically that the
25 stores cease from further operations without seeing patients prior to providing services or otherwise

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28 ² <https://www.cnbc.com/2020/02/19/smiledirectclubs-top-dentist-risks-losing-license-in-california-crackdown.html>.

1 provide enhanced and improved medical services, and that they provide injunctive restitution in the
2 amount of all monies paid by patients, and that they disgorge all monies, for the illegally operated
3 dental practice.

4 **CLASS ALLEGATIONS**

5 18. Class Definition. Plaintiff brings this civil class action on behalf of himself individually
6 and on behalf of all other similarly situated persons, as a class action pursuant to Federal Rule of Civil
7 Procedure 23. The “Class” which Plaintiffs seek to represent is comprised of and defined as follows:
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9 All persons who maintain an address with Defendants in the State of California, at any
10 time between December 3, 2017, and the present date, who did not disclaim California
citizenship, who enrolled to receive Defendants’ services.

11 19. Excluded from the class are Defendants, their officers and directors, members of the
12 immediate families of the foregoing, legal representatives, heirs, successors, or assigns of the
13 foregoing, and any entity in which Defendants have a controlling interest.

14 20. Plaintiff reserves the right to modify the definition of the Class (or add one or more
15 subclasses) after further discovery.

16 21. Plaintiff and all Class members have been impacted and harmed by the acts of
17 Defendants or their affiliates, agents, or subsidiaries acting on their behalf.

18 22. This Class Action Complaint seeks public injunctive relief and restitution in that
19 Defendants market through e-mails, that one can avoid the need for providing aligners. Further, they
20 denote a dollar sign next to Invisalign, and that conversely, there would be no corollary cost with
21 respect to Defendants’ products and services.
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23 23. Defendants or any affiliates, subsidiaries, or agents of Defendants have acted on
24 grounds generally applicable to the Class, thereby making final injunctive relief and corresponding
25 declaratory relief with respect to the Class as a whole appropriate. Moreover, on information and
26 belief, Plaintiff alleges that the violations complained of herein are substantially likely to continue in
27 the future if an injunction is not entered.

28 24. This action may properly be brought and maintained as a class action pursuant to

1 Federal Rule of Civil Procedure 23 as a restitution class, or in the alternative, as an injunctive relief
2 class. This class action satisfies the numerosity, typicality, adequacy, commonality, predominance,
3 and superiority requirements.

4 25. On application by Plaintiff's counsel for class certification, Plaintiff may also seek
5 certification of subclasses in the interests of manageability, justice, or judicial economy.

6 26. Numerosity. The number of persons within the California-only Class is substantial,
7 believed to amount to approximately 100,000 persons in the State of California. It is, therefore,
8 impractical to join each member of the Class as a named plaintiff. Further, the size and relatively
9 modest value of the claims of the individual members of the Class renders joinder impractical.
10 Accordingly, utilization of the class action mechanism is the most economically feasible means of
11 determining and adjudicating the merits of this litigation.

12 27. Typicality. Plaintiff received medical treatment and services from Plaintiff on or about
13 May 28, 2020, and at other times. Consequently, the claims of Plaintiff are typical of the claims of the
14 members of the Class, and Plaintiff's interests are consistent with and not antagonistic to those of the
15 other Class members he seeks to represent. Plaintiff and all members of the Class have been impacted
16 by, and face continuing harm arising out of, Defendants' providing the unauthorized practice of
17 dentistry services as alleged herein.

18 28. Adequacy. As the proposed Class representative, Plaintiff has no interests adverse to
19 or which conflict with the interests of the absent members of the Class, and he is able to fairly and
20 adequately represent and protect the interests of such a Class. Plaintiff has raised viable claims and
21 equitable claims of the type reasonably expected to be raised by members of the Class and will
22 vigorously pursue these claims. If necessary, as the litigation (including discovery) progresses,
23 Plaintiff may seek leave to amend this Class Action Complaint to modify the Class definition set forth
24 above, add additional Class representatives, or assert additional claims. Plaintiff's counsel is
25 experienced in handling class action claims and committed to prosecuting this action.

26 29. Commonality and Predominance. There are well-defined common questions of fact and
27 law that exist as to all members of the Class and predominate over any questions affecting only
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1 individual members of the Class. These common legal and factual questions, which do not vary from
2 Class member to Class member and may be determined without reference to the individual
3 circumstances of any Class member, include (but are not limited to) the following:

- 4 a) Whether Defendants or affiliates, subsidiaries, or agents of Defendants, provided
5 services or products that qualify as medical services;
- 6 b) Whether Defendants or affiliates, subsidiaries, or agents of Defendants, provided
7 services or products that qualify as dentistry services;
- 8 c) Whether Defendants or affiliates, subsidiaries, or agents of Defendants, provided
9 services and products that may only be performed by dentists licensed by the California
10 Board of Dentistry;
- 11 d) Whether Defendants or any affiliates, subsidiaries, or agents of Defendants should be
12 enjoined from engaging in such conduct in the future;
- 13 e) Whether Defendants or any affiliates, subsidiaries, or agents induced consumers into
14 using dental services and represented or implied, the level of care was the same as if a
15 licensed dentist was involved the entire time;
- 16 f) Whether Defendants violated the California Consumers Legal Remedies Act, Cal. Civ.
17 Code § 1750 *et seq.*, by misrepresenting the nature of their services and products
18 provided.
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20 30. Superiority. A class action is superior to other available methods for the fair and
21 efficient adjudication of this controversy because the prosecution of individual litigation on behalf of
22 each Class member is impracticable. Even if every member of the Class could afford to pursue
23 individual litigation, the court system could not; multiple trials of the same factual issues would
24 magnify the delay and expense to all parties and the court system. Individualized litigation would also
25 present the potential for varying, inconsistent or contradictory judgments. By contrast, the
26 maintenance of this action as a class action, with respect to some or all of the issues presented herein,
27 presents few management difficulties, conserves the resources of the parties and the court system and
28 protects the rights of each member of the Class. Plaintiff anticipates no difficulty in the management

1 of this action as a class action. Class wide relief is essential to compel compliance with only services
2 performed by a licensed dentist, and thus protect consumers' privacy. The interests of Class members
3 in individually controlling the prosecution of separate claims is small because the restitution
4 recoverable in an individual action for violation of an action such as this, are relatively small. Class
5 members can be readily located and notified of this class action by reference to Defendants' records
6 and, if necessary, the records of Defendants' affiliates, agents, or subsidiaries.

7 31. Additionally, the prosecution of separate actions by individual Class members would
8 create a risk of multiple adjudications with respect to them that would, as a practical matter, be
9 dispositive of the interests of other members of the Class who are not parties to such adjudications,
10 thereby substantially impairing or impeding the ability of such nonparty Class members to protect
11 their interests. The prosecution of individual actions by Class members could also establish
12 inconsistent results and/or establish incompatible standards of conduct for Defendants.

13 **CAUSES OF ACTION**

14 **FIRST CAUSE OF ACTION**

15 **(Declaratory Relief Concerning Avoidance of Patient Contracts)**

16 32. Plaintiff realleges and incorporates herein by reference all of the allegations set forth
17 in the preceding paragraphs as though fully set forth herein.

18 33. In their agreement with plaintiff and patients of the proposed class ("Patient
19 Contracts"), Defendants committed to providing certain medical services. A copy of Mr. Navarro's
20 agreement is appended hereto.

21 34. Specifically, as part of the contractual services provided, the Defendants do not conduct
22 an initial exam of Plaintiff and class members' mouths, gums, roots before a diagnosis and treatment
23 plan is discussed with the patient. Independently, the Defendants practiced dentistry under the patient
24 contracts by performing, or offering to perform, orthodontic diagnosis and the treatment of malposed
25 teeth, which is the practice of dentistry as defined by Code section 1625, subsection (b).
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27 35. As part of the contractual services provided, Defendants represent that they can perform
28 orthodontic treatment and construct, alter, repair, or sell orthodontic appliances, which is the practice

1 of dentistry as defined by Code section 1625, subsection (c).

2 36. As part of the contractual services provided, Defendants managed or conducted as
3 manager, proprietor, conductor, lessor, or otherwise, places where dental procedures were performed,
4 which is the practice of dentistry as defined by Code section 1625, subsection (e).

5 37. As part of the contractual services provided, Defendants advertised, fabricated,
6 manufactured and sold orthodontic appliances directly to consumers when the casts and/or impressions
7 for the work had not been made or taken by any licensed dentist and without any written authorization
8 for the work by Sulitzer or any other dentist, which is the practice of dentistry as defined by Code
9 section 1626, subsection (e).

10 38. An actual case or controversy exists over whether the Patient Contracts are illegal
11 contracts, void, unenforceable, void against public policy, and unenforceable because the Patient
12 Contracts contemplating providing services and products that require a license, and no licensed dentist
13 actually rendered care.

14 39. California has a strong interest in protecting patients from unlicensed medical care.

15 40. Accordingly, Plaintiff and the Class seek a declaratory judgment finding that the Patient
16 Contracts are avoidable, void, illegal, unenforceable, and unconscionable in accordance with the above
17 facts and law.
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19 20 **SECOND CAUSE OF ACTION**

21 **(Rescission of Patient Contracts)**

22 41. Plaintiff realleges and incorporates herein by reference all of the allegations set forth
23 in the preceding paragraphs as though fully set forth herein.

24 42. *California Civil Code Section 1689(b)(5)* provides that a contract may be rescinded
25 “[i]f the unlawful contract is unlawful for causes which do not appear in its terms or conditions, and
26 the parties are not equally at fault.”

27 43. *California Civil Code Section 1689(b)(6)* provides that a contract may be rescinded
28 “[i]f the public interest will be prejudiced by permitting the contract to stand.”

1 44. The Corporate Practice of Medicine Doctrine (the “CPOM Doctrine”) applies in
2 California.

3 45. California’s anti-fee splitting ban is rooted in *Business and Professions Code Section*
4 *650(a)*. The statute prohibits physicians and other licensed professionals from offering or receiving
5 rebates, refunds, commissions or other consideration, as compensation or inducement for the referral
6 of patients, clients or customers to any person. Here, several dentists including Mr. Sulitzer, and other
7 DOE dentists, received rebates refunds and other consideration as compensation for inducement of
8 referral of patients to Defendants business, and such consideration was not commensurate with the
9 value of the services furnished by Mr. Sulitzer and the DOE defendants, nor the fair rental value of
10 any premises or equipment eased or provided.

11 46. At least 51% of the shareholders of a corporation providing medical services, must be
12 medical professionals licensed to deliver the primary category of medical services provided by the
13 professional corporation. *Moscone-Knox Professional Corporation Act*, CA Corps Code § 13401.5.

14 47. In their agreement with plaintiff and patients of the proposed class, Defendants agreed
15 to provide certain medical services. A copy of Mr. Navarro’s agreement is appended hereto.

16 48. Specifically, as part of the contractual services provided, the Defendants do not conduct
17 an initial exam of Plaintiff and class members’ mouths, gums, roots before a diagnosis and treatment
18 plan is discussed with the patient. Independently, the Defendants practiced dentistry under the patient
19 contracts by performing, or offering to perform, orthodontic diagnosis and the treatment of malposed
20 teeth, which is the practice of dentistry as defined by Code section 1625, subsection (b).

21 49. As part of the contractual services provided, Defendants advise that they can perform
22 orthodontic treatment and construct, alter, repair, or sell orthodontic appliances, which is the practice
23 of dentistry as defined by Code section 1625, subsection (c).

24 50. As part of the contractual services provided, Defendants managed or conducted as
25 manager, proprietor, conductor, lessor, or otherwise, places where dental procedures were performed,
26 which is the practice of dentistry as defined by Code section 1625, subsection (e).
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1 51. As part of the contractual services provided, Defendants advertised, fabricated,
2 manufactured and sold orthodontic appliances directly to consumers when the casts and/or impressions
3 for the work had not been made or taken by any licensed dentist and without any written authorization
4 for the work by Sulitzer or any other dentist, which is the practice of dentistry as defined by Code
5 section 1626, subsection (e).

6 52. Based on the foregoing, the Patient Contracts are unlawful for causes which do not
7 appear in the terms or conditions of the contract. Specifically, the Patient Contracts concern the
8 unauthorized practice of dentistry which is an unlawful cause that does not appear in the terms and
9 conditions.

10 53. Plaintiff and the Class are not equally at fault.

11 54. Alternatively, and based on the foregoing, the public interest will be prejudiced by
12 permitting the Patient Contracts to stand.

13 55. The public interest will be prejudiced by permitting the Patient Contracts to stand
14 because the public has an interest in obtaining quality medical treatment by licensed professionals. In
15 addition, the public interest will be prejudiced by permitting contracts involving unlicensed dentistry
16 clinics to stand.

17 56. Alternatively, the Patient Contracts would prejudice the public, and are void, because
18 the contracting party is not properly licensed and incorporated under California Law as a
19 “professional” corporation, as it must, and 51% of the Defendants’ corporations are not owned by
20 professionals licensed in California.

21 57. Alternatively, the public interest would be prejudiced because Defendants and their
22 clinics, have violated *Business and Professions Code Section 650(a)*.

23 58. As a result of the foregoing, the patient contracts must be rescinded, and Plaintiff and
24 the Class are entitled to injunctive relief in the form of correction of the foregoing violations,
25 restitution in the form of all monies paid by Plaintiff and the Class Members to the Defendants,
26 interest, costs, disgorgement, and attorney’s fees.

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THIRD CAUSE OF ACTION

(Negligence)

59. Plaintiff realleges and incorporates herein by reference all of the allegations set forth in the preceding paragraphs as though fully set forth herein.

60. Based on the unauthorized practice of dentistry, Defendants were negligent in rendering care to the Plaintiff and the Class Members.

61. Specifically, the Defendants do not conduct an initial exam of Plaintiff and class members' mouths, gums, roots before a diagnosis and treatment plan is discussed with the patient, which is negligent.

62. Independently, the Defendants practiced dentistry by performing, or offering to perform, orthodontic diagnosis and the treatment of malposed teeth, which is the practice of dentistry as defined by Code section 1625, subsection (b). Providing such services without a license falls below the standard of care, and renders Defendants liable on a strict liability basis. Defendants owed a duty to Plaintiff and the Class members because it undertook to provide medical services to Plaintiff and Class members.

63. The Defendants advise that they can perform orthodontic treatment and construct, alter, repair, or sell orthodontic appliances, which is the practice of dentistry as defined by Code section 1625, subsection (c). Providing such services or rendering advice pertaining to such services, without a license, falls below the standard of care, and renders Defendants liable on a strict liability basis.

64. The Defendants managed or conducted as manager, proprietor, conductor, lessor, or otherwise, places where dental procedures were performed, which is the practice of dentistry as defined by Code section 1625, subsection (e). Providing such services or rendering advice pertaining to such services, without a license, falls below the standard of care, and renders Defendants liable on a strict liability basis.

65. The Defendants advertised, fabricated, manufactured and sold orthodontic appliances directly to consumers when the casts and/or impressions for the work had not been made or taken by any licensed dentist and without any written authorization for the work by Sulitzer or any other dentist, which is the practice of dentistry as defined by Code section 1626, subsection (e). Providing such

1 services or rendering advice pertaining to such services, without a license, falls below the standard of
2 care, and renders Defendants liable on a strict liability basis.

3 66. The unlicensed work caused Plaintiff and the Class members to pay monies for
4 services, and they were harmed by the unlicensed work and damages they sustained.

5 **FOURTH CAUSE OF ACTION**

6 **(Breach of Fiduciary Duty)**

7 67. Plaintiff realleges and incorporates herein by reference all of the allegations set forth
8 in the preceding paragraphs as though fully set forth herein.

9 68. A relationship of special trust and confidence existed between Defendants, on the one
10 hand, and Plaintiff and the proposed class members, on the other hand, by virtue of the Defendants'
11 professed special skill, knowledge, and expertise, the relationship of mutual confidence, and the
12 established course of dealing between them.

13 69. As a result of this special relationship of trust and confidence existing between
14 Defendants and Plaintiff and the proposed class members, defendants owed to plaintiff and the
15 proposed class members a fiduciary duty of loyalty, utmost good faith, competence, and diligence.

16 70. Because of their actions and omissions alleged here, including but not limited to the
17 unauthorized practice of dentistry, Defendants breached their fiduciary duties to Plaintiff and the
18 proposed class members, and failed to competently and diligently carry out his responsibilities.

19 71. As a direct and proximate result of defendants' breach of fiduciary duties, plaintiff and
20 the proposed class members have been damaged as described here, and are entitled to recover
21 damages, as well as a disgorgement of monies retained by defendants.

22 **FIFTH CAUSE OF ACTION**

23 **(Unfair Business Practices [Cal. B&P Code §§17200, *et seq.*])**

24 72. Plaintiff realleges and incorporates herein by reference all of the allegations set forth
25 in the preceding paragraphs as though fully set forth herein.
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1 73. Defendants' acts and omissions alleged here violate the California Unfair Competition
2 Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.* Section 17200 prohibits unfair competition by engaging
3 in, among other things, any unlawful or unfair business acts or practices.

4 74. California Business & Profession Code §2052(a) prohibits the practice of medicine
5 without a valid license.

6 75. Defendants committed acts of unfair competition, as defined by the Unfair Competition
7 Law, by, among other things, engaging in the acts and omissions alleged in the Complaint. Also,
8 defendants committed such acts and omissions with the intent and objective of deceiving consumers
9 and putting profits ahead of patient care.

10 76. Defendants do not conduct an initial exam of Claimant and class members' mouths,
11 gums, roots before a diagnosis and treatment plan is discussed with the patient.

12 77. Defendants practiced dentistry by performing, or offering to perform, orthodontic
13 diagnosis and the treatment of malposed teeth, which is the practice of dentistry as defined by Code
14 section 1625, subsection (b).

15 78. Defendants indicated that it would perform orthodontic treatment and construct, alter,
16 repair, or sell orthodontic appliances, which is the practice of dentistry as defined by Code section
17 1625, subsection (c).

18 79. Defendants managed or conducted as manager, proprietor, conductor, lessor, or
19 otherwise, places where dental procedures were performed, which is the practice of dentistry as
20 defined by Code section 1625, subsection (e).

21 80. Defendants advertised, fabricated, manufactured and sold orthodontic appliances
22 directly to consumers when the casts and/or impressions for the work had not been made or taken by
23 any licensed dentist (Sulitzer or otherwise) and without any written authorization for the work by
24 Sulitzer or any other dentist, which is the practice of dentistry as defined by Code section 1626,
25 subsection (e).

26 81. As a direct and proximate result of defendants' acts and omissions alleged here,
27 plaintiffs and the proposed class members have suffered and continue to suffer direct and substantial
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1 injury, and defendants received and continue to hold, and to unlawfully profit from, ill-gotten gains
2 rightfully belonging to plaintiff and the proposed class members.

3 **SIXTH CAUSE OF ACTION**

4 **(California Consumer Legal Remedies Act)**

5 82. Plaintiff realleges and incorporates herein by reference all of the allegations set forth
6 in the preceding paragraphs as though fully set forth herein.

7 83. By their actions and omissions alleged here, defendants engaged in unfair or deceptive
8 practices or acts in their representation of plaintiff and the proposed class members, in violation of the
9 California Consumers Legal Remedies Act. Specifically, and without limitation, defendants by
10 providing services required to be licensed, and misrepresenting the corporate status of a company that
11 had a licensed doctor: (1) misrepresented the source of their services in violation of Cal. Civ. Code §
12 1770(2); and (2) misrepresented the affiliation, connection, or association with the entity giving rise
13 to the conflict of interest, in violation of Cal. Civ. Code § 1770(3).
14

15 84. As a direct and proximate result of Defendants' violation of the California Consumers
16 Legal Remedies Act, plaintiff and the proposed class members have been injured as described here.
17 Defendants have acted in bad faith, and have shown willful misconduct, malice, fraud, wantonness, or
18 oppression or that entire want of care which would raise the presumption of conscious indifference to
19 consequences. As a direct and proximate result of defendants' actions and omissions alleged here,
20 plaintiff and the proposed class members have been injured, and are entitled to injunctive relief.

21 **SEVENTH CAUSE OF ACTION**

22 **(Fraudulent Inducement)**

23 85. Plaintiff realleges and incorporates herein by reference all of the allegations set forth
24 in the preceding paragraphs as though fully set forth herein.

25 86. Defendants falsely represented to the Class that a licensed dentist wholly owned and
26 entirely controlled the subject dental offices and mobile dental units when he did not.

27 87. Defendants performed or otherwise permitted orthodontic treatment on persons who
28 were not his patient of record and/or allowed the construction of orthodontic appliances without any

1 written authorization for the work by Defendant or any dentist working under him.

2 88. Defendants falsely represented that smile could be corrected or fixed, and that class
3 members' teeth could be fixed and straightened without in-patient care and without an initial exam.

4 89. When Defendants made these representations, they had no reasonable ground for
5 believing them to be true.

6 90. Defendants made such material misrepresentations with the intention of inducing
7 Plaintiff to undergo unnecessary dental surgeries and other radical and invasive dental treatment, all
8 to Plaintiff's detriment.

9 91. Plaintiff, was ignorant of the falsity of Defendants' representations perceived and made
10 on or about the time of treatment of May 2020, and believed them to be true. In justifiable reliance on
11 these representations, Plaintiff was induced to undergo treatment, all of which Plaintiff would not have
12 agreed to had he known the actual facts.

13 92. As a proximate result of the misrepresentations made by Defendants, Plaintiff has
14 sustained injury to his health, strength and activity, all of which injuries have caused, and continue to
15 cause, Plaintiff great mental, physical and nervous pain and suffering.

16 93. As a further proximate result of the misrepresentations made by Defendants, Plaintiff
17 has sustained, and will continue to sustain, serious and permanent physical and emotional injuries, all
18 to Plaintiff's general damage in an amount according to proof.

19 94. As a further proximate result of the misrepresentations made by Defendants, Plaintiff
20 has incurred medical, hospital, psychological and related expenses in an amount according to proof.

21 95. As a further proximate result of the misrepresentations made by Defendants, Plaintiff
22 will in the future incur medical, hospital, psychological and related expenses, the exact nature and
23 extent of which are currently unknown to Plaintiff.

24 96. As a further proximate result of the misrepresentations made by Defendant, and each
25 of them, Plaintiff has sustained loss of earnings and loss of earning capacity, the exact nature and
26 extent of which are currently unknown to Plaintiff.

27 97. Defendant Sulitzer is subject to disciplinary action for unprofessional conduct under
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1 Code section 1680, subdivision (w), in that he used fraud in the procurement of permits issued pursuant
2 to the Dental Practice Act, Code sections 1600, *et seq.*

3 98. Specifically, when applying for FNPs for various dental offices located throughout
4 California, Mr. Sulitzer represented under penalty of perjury that he wholly owned and entirely
5 controlled the subject offices. These representations were false. The subject dental offices were in fact
6 owned and controlled, either entirely or in part, by the Smile Direct entities.

7 99. Further, when applying for AOPs for the various dental offices located throughout
8 California, Defendant Sulitzer represented under penalty of perjury that:

9 i He accepted legal responsibility and liability for dental services rendered in the offices;
10 ii The offices were in compliance with section 1658.1 and all other applicable State and
11 Federal laws, including that the offices were in compliance with the supervision requirements of the
12 Dental Practice Act; and,

13 iii In the offices there was visibly posted in an area likely to be seen by all patients using
14 the facility a sign with Sulitzer's name, mailing address, telephone number, and dental license number.

15 100. Sulitzer's representations were false. The true facts were that Sulitzer did not accept
16 legal responsibility and liability for dental services rendered in the dental offices. Instead, patients
17 presenting at the offices were requested to execute informed consent forms in which it was stated: "I
18 release [the Company] from liability for any claims by me or any third party in connection with my
19 participation or use of the invisible aligner treatment," tending to deceive patients into believing that
20 they have no legal recourse for the aligner treatment that Sulitzer was supposedly to render.

21 101. Further, the San Francisco Office, Oakland Office, and L.A. Office were not in
22 compliance with section 1658.1 and all other applicable state and federal laws as Sulitzer had
23 affirmatively represented because:

24 i As alleged in greater detail below in paragraph 57, the offices failed to comply with the
25 supervision requirements of the Dental Practice Act in that dental assistants were permitted to take
26 without direct supervision health histories and intraoral 3D scan impressions of patients' dentition for
27 the purpose of orthodontic diagnosis and treatment planning, including for the fabrication and
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1 manufacture of orthodontic aligners, in violation of Code section 1750.1, subsections (b)(3) and (b)(8);
2 and/or,

- 3 ii Sulitzer failed to post in the dental offices any:
- 4 a) Signage as required by section 1658.1, subsection (c);
- 5 b) Notice of Licensure as required by title 16, CCR section 1065;
- 6 c) Copy of title 16, CCR section 1005 (pertaining to minimum standards for infection
7 control) as required by title 16, CCR section 1005, subsection (b)(3); and/or,
- 8 d) Dental auxiliary duties as required by title 16, CCR section 1068.

9 102. As alleged above, Defendants made a number of representations concerning their
10 business, including that this was a way for normal people to obtain incredible financial success.

11 103. Defendants' representations described above were false. However, despite knowing of
12 the falsity of their representations, Defendants concealed, and/or failed to disclose material and
13 contrary facts set forth above.

14 104. Defendants had a duty to disclose this information to their patients because: it is
15 material information that would reflect the fraudulent nature of the business, and Defendants knew the
16 information was not reasonably discoverable by their patients; Defendants made affirmative
17 representations that were contrary and misleading without the disclosure of this information; and/or
18 Defendants actively concealed this information from their patients, the government and the public.

19 105. Defendants concealed and failed to disclose these material facts with the intent to
20 deceive Plaintiff and the Class, including but not limited to risks of engaging in dental practices
21 without conducting an initial exam.

22 106. Defendants' concealments and non-disclosure of material facts as set forth above were
23 made with the intent to induce Plaintiffs and the Class to seek services.

24 107. Plaintiff and the Class, at the time these failures to disclose and suppressions of facts
25 occurred, and at the time Plaintiff and the Class sought services, were ignorant of the existence of the
26 facts that Defendants suppressed and failed to disclose. If Plaintiff and the Class had known of
27 facts that Defendants suppressed and failed to disclose. If Plaintiff and the Class had known of
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1 Defendants' concealments and failures to disclose material facts, they would not have taken the actions
2 they did, including but not limited to seeking dental services from Defendants.

3 108. Plaintiff and the Class' reliance was justified and reasonable as they had no basis to
4 doubt the original representations made to them, nor did they have reason to believe they were being
5 misled or material facts were being concealed from them.

6 109. As a direct and proximate result of the above, Plaintiff and the Class have suffered
7 damages in an amount to be proven at trial.

8 110. Defendants undertook the aforesaid illegal acts intentionally or with conscious
9 disregard of the rights of Plaintiff and the Class, and did so with fraud, oppression, and/or malice. This
10 despicable conduct subjected Plaintiffs and the Class to cruel and unjust hardship so as to justify an
11 award of punitive damages in an amount sufficient to deter such wrongful conduct in the future.
12 Therefore, Plaintiff and the Class are also entitled to punitive damages against Defendants in an
13 amount to be determined at trial. Plaintiff reallege all allegations as if fully set forth herein, and
14 incorporate previous allegations by reference.
15

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff Arnold Navarro prays for relief and judgment in favor of himself and
18 the Class as follows:

19 A. Injunctive relief sufficient to ensure Defendants refrain from violating the above
20 statutes and disgorgement of all monies paid by patients to Defendants as restitution during the Class
21 Period;

22 B. An Order certifying this action to be a proper class action, establishing an appropriate
23 Class and any Subclass(es) the Court deems appropriate, finding that Plaintiff is proper representative
24 of the Class, and appointing the attorneys representing Plaintiff as counsel for the Class; and

25 C. An award of attorneys' fees, interest, and costs to Plaintiff's counsel, payable from any
26 class-wide damages recovered by the Class.

27 D. An award of punitive damages.
28

1 DATED: March 14, 2022

Respectfully submitted,

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Attorneys for Plaintiff and the Proposed Class

1 **DEMAND FOR JURY**

2 Plaintiff requests a trial by jury on all issues so triable.

3
4 DATED: March 14, 2022

Respectfully submitted,

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14 *Attorneys for Plaintiff and the Proposed Class*

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CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2022, I electronically filed the foregoing document using the CM/ECF system, which will send notification of such filing to all counsel of record registered in the CM/ECF system.

/s/ Blake J. Lindemann